

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JULIE DALESSIO, an individual

Plaintiff,

V.

UNIVERSITY OF WASHINGTON,

Defendant.

Case No. 2:17-cv-00642

**PLAINTIFF'S RESPONSE (and
incorporated objections)
TO Defendant University of
Washington's Motion for SUMMARY
JUDGMENT DISMISSAL OF
PLAINTIFF's CLAIMS**

**Noted for Hearing:
Friday, September 15, 2017**

1
TABLE OF CONTENTS

2	Table of Contents	p.2- 3
3	Table of Authorities	p. 4-11
4	I. INTRODUCTION	13
5	II. EVIDENCE RELIED UPON	14
6	III. STATEMENT OF FACTS	14
7	A. PUBLIC RECORDS RELEASE	15
8	1. UW provided Personal, confidential information to Unauthorized Persons	
9	a) PR 15-00570, provided to Plaintiff's next door neighbor.	15
10	b) Plaintiff was classified staff and student at the University of Washington	15
11	c) UW has admitted that staff failed to redact Plaintiff's Social Security Number	16
12	d) The Plaintiff has satisfied exhaustion requirements; this case was timely filed.	17
13	2. <u>Public Records Requests regarding UW employment records.</u>	17
14	a) The UW did not request records from the persons likely to have custody.	17
15	b) The UW responses to Public Records requests differ based on the purported	
16	identity of the requestor.	18
17	c) Public Dissemination of Confidential Employee Information	19
18	B. BREACH OF CONTRACT	20
19	1. The Settlement Agreement	20
20	2. The UW publicized the Agreement.	20
21	3. Statement of the Dispute refers to Plaintiffs "employment relationship with the	
22	University of Washington."	20
23	4. The UW did not comply with the terms of the Agreement.	20
24	5. The UW removed this lawsuit from King County Superior Court	21
25	6. The Public Records Releases contain Evidence of Additional Breaches	21
26	C. Libel/ Slander/Defamation Negligence, Malice	21

	D. CIVIL AND EMPLOYMENT RIGHTS	22
1	1. The conduct complained of was committed by persons acting under color of state law.	
2	2. The Plaintiff has satisfied all Exhaustion and Service requirements	
3		
4		
5	IV. ARGUMENT AND ANALYSIS	22
6	A. “Good Faith” Immunity Doctrine Does Not Bar any of Plaintiff’s Claims.	23
7	1. The UW is liable for the tortious Actions of its Employees, Invasion of Privacy.	23
8	2. “Good Faith” Analysis.	24
9		
10		
11	B. THE CONDUCT OF THE UW VIOLATED STATUTORY AND CONSTITUTIONAL RIGHTS to Privacy	25
12	C. 28 U.S.C. § 1367 provides for federal supplemental jurisdiction over all other claims in this action.	26
13		
14		
15	D. Libel/ Slander/Defamation	27
16		
17	E. Negligence/Malice	29
18		
19	F. Civil Rights Violations, Discrimination, Retaliation	31
20	1. Plaintiff’s Claims for Civil Rights Violations thus far have been based on the 2015-2017 actions of the UW, and the terms of the Settlement Agreement	31
21	2. Plaintiff has no wish to relitigate her employment relationship with the UW.	32
22	3. Terms of the Settlement Agreement Specifically denote Age and Disability, and Bar the Plaintiff’s Right to Complain of Discrimination	32
23	4. Plaintiff’s employment claims	32
24	a) 42 U.S.C sec. 1981 includes post-employment retaliation	
25	b) Statute of Limitations	
26	5. Whistleblower Protection	37
27		
28		
29	V. INJUNCTIVE RELIEF	38
30		
31		

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TABLE OF AUTHORITIES

2

3 1. "[A]n individual has a **privacy** interest whenever information which reveals unique
 4 facts about those named is linked to an identifiable individual." *Cowles*, 44 Wn. App. at 897
 5 (quoting *In re Rosier*, 105 Wn.2d 606, 613, 717 P.2d 1353 (1986))

6 2. ". . .[T]he employee **privacy** definition protects personal information that the
 7 employee would not normally share with strangers." *Dawson*, 120 Wn.2d at 796 (quoting
 8 *Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30, 38, 769 P.2d 283 (1989)) (citing
 9 *Cowles*, 44 Wn. App. at 890-91).

10 3. In *Cowles*, the court discussed what sort of information the "personal" exception was
 11 intended to protect: Such information might include, *but is not limited to*, the particular
 12 employee's union dues, charitable contributions, deferred compensation, medical records,
 13 disabilities, employment performance evaluations, and reasons for leaving employment.
 14 Likewise, the phrase may include those sensitive records relating to health, or marital and
 15 family information necessary for calculating health plans, job benefits, and taxes.
 16 *Cowles*, 44 Wn. App. at 891 (citation omitted) (emphasis added).

17 4. "release of employees' identification numbers would be highly offensive, because
 18 disclosure could lead to public scrutiny of individuals concerning information unrelated to
 19 any governmental operation and impermissible invasions of **privacy** as contemplated in
 20 *Painting Indus, Preservation Fund, and Hopkins*. 90 Wn. App. 205; 951 P.2d 357; 1998
 21 Wash. App. LEXIS 273"

22 5. "disclosure of identified employees' address, wage, and benefits information
 23 unwarranted because the public's interest did not meet FOIA's central purpose—"to open
 24 agency action to the light of public scrutiny." *Department of Air Force v. Rose*, 425 U.S.
 25 352, 357, 96 S. Ct. 1592, 48 L. Ed. 2d 11 (1976).

26 6. In *Human Rights Comm'n v. City of Seattle*, 25 Wn. App. 364, 607 P.2d 332 (1980)
 27 (HRC), determined that answers to questions such as why the applicant left his or her last job,
 28 the applicant's salary, and questions about education, military service, criminal convictions,
 29 and disabilities, were personal information. *HRC*, 25 Wn. App. at 369-70.

30 7. Washington courts often look to federal court interpretations of similar provisions of
 31 the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1966), for guidance in interpreting
 32 Washington's public disclosure act. See *Dawson*, 120 Wn.2d at 791 ("Cases interpreting
 33 FOIA are relevant when we are interpreting our state act."). Exemption 6 of FOIA protects
 34 "personnel and medical files . . . the disclosure of which would constitute a clearly
 35 unwarranted invasion of personal **privacy**."

TABLE OF AUTHORITIES

8. 5 U.S.C. § 552(b)(6). *Id.* at Subsection (4) exempts "trade secrets and commercial or financial information obtained from a person and privileged or confidential;"

9. It is clear from federal cases that Exemption 6 prevents disclosure of employee job classification, salary and benefits information, *coupled with the employee's name and address*. For example, in *Painting Indus. of Haw. Mkt. Recovery Fund v. United States Dep't of Air Force*, 26 F.3d 1479 (9th Cir. 1994), the court stated that "[t]he requesters seek to procure not only a name and address list of workers, but a list that connects those names to precise information about each worker's occupational classification, wages, and wage deductions. It cannot be disputed that this information is normally considered private." *Painting Indus.*, 26 F.3d at 1483.

10. in *Painting & Drywall Work Preservation Fund, Inc. v. Department of Hous. & Urban Dev.*, 936 F.2d 1300 (D.C. Cir. 1991), the court held that employee names, addresses, and wage, hour, and deduction information was personal and exempt from disclosure under FOIA

11. *Hopkins v. Department of Hous. & Urban Dev.*, 929 F.2d 81 (2nd Cir. 1991), determined that payroll records, which contained employee names, addresses, and wage information, were exempt from disclosure because of the employees' substantial **privacy** interest against dissemination of that information.

12. “[T]he disclosure of a public employee's [s]ocial [s]ecurity number would be highly offensive to a reasonable person and not of legitimate concern to the public. Also, residential addresses and telephone numbers of employees of public agencies are independently exempt from disclosure under RCW 42.17.310(1)(u).” PAWS 125 Wn 2d at 254

13. 90 Wn. App. 205; 951 P.2d 357; 1998 Wash. App. LEXIS 273 argues that disclosure of an employee's name coupled with his or her identification number would provide access to other exempt personal information, such as the social security number, home address, and telephone number and that release of employees' identification numbers would be highly offensive, because disclosure could lead to public scrutiny of individuals concerning information unrelated to any governmental operation and impermissible invasions of **privacy** as contemplated in *Painting Indus., Preservation Fund.*, and *Hopkins*.

14. the letters are recommendations and intra-University memorandums expressing opinions and evaluations made preliminary to, and not publicly cited in connection with, any University action they are exempt under RCW 42.17.310(1)(i). -- *Hafermehl v. University of Washington*, 29 Wn. App. 366, 368 (Wash. Ct. App. 1981)

1
2 **TABLE OF AUTHORITIES**
3

4 **RCW 41.06.450**
5

6 **Destruction or retention of information relating to employee misconduct.**
7

8 (1) The director shall adopt rules applicable to each agency to ensure that information
9 relating to employee misconduct or alleged misconduct is destroyed or maintained as
10 follows:

11 (a) All such information determined to be false and all such information in situations where
12 the employee has been fully exonerated of wrongdoing, shall be promptly destroyed;
13 (b) All such information having no reasonable bearing on the employee's job performance or
14 on the efficient and effective management of the agency, shall be promptly destroyed;
15 (c) All other information shall be retained only so long as it has a reasonable bearing on the
16 employee's job performance or on the efficient and effective management of the agency.

17 **RCW 41.06.450** Destruction or retention of information related to employee misconduct or
18 alleged misconduct “The legislature finds that . . . The purpose of RCW 41.06.450 is “. . . so
19 that records are maintained in a manner which is fair to employees . . .”)

20 **RCW 42.40.020(3)** “An individual who knowingly provides or reports, or who reasonably
21 ought to know he or she is providing or reporting malicious, false, or frivolous information,
22 or information that is provided with reckless disregard for the truth, or who knowingly omits
relevant information is not acting in good faith.”

23 **RCW 42.52.050** “(3) No state officer or state employee may disclose confidential
24 information to any person not entitled or authorized to receive the information.”

25 **RCW 42.56.050 Invasion of privacy, when.**
26

27 A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these
28 terms are used in this chapter, is invaded or violated only if disclosure of information about

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TABLE OF AUTHORITIES

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3 the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate
 4 concern to the public. The provisions of this chapter dealing with the right to privacy in
 5 certain public records do not create any right of privacy beyond those rights that are specified
 6 in this chapter as express exemptions from the public's right to inspect, examine, or copy
 public records.

7 [**1987 c 403 § 2.** Formerly RCW **42.17.255.**]

8 **NOTES:**

9 **Intent—1987 c 403:** "The legislature intends to restore the law relating to the release of
 10 public records largely to that which existed prior to the Washington Supreme Court decision
 11 in "In Re Rosier," 105 Wn.2d 606 (1986). The intent of this legislation is to make clear that:
 12 (1) Absent statutory provisions to the contrary, agencies possessing records should in
 13 responding to requests for disclosure not make any distinctions in releasing or not releasing
 14 records based upon the identity of the person or agency which requested the records, and (2)
 15 agencies having public records should rely only upon statutory exemptions or prohibitions
 16 for refusal to provide public records. Further, to avoid unnecessary confusion, "privacy" as
 17 used in RCW **42.17.255** is intended to have the same meaning as the definition given that
 word by the Supreme Court in "Hearst v. Hoppe," 90 Wn.2d 123, 135 (1978)." [**1987 c 403 §**

18 **1.]**

19 **RCW 42.56.070 Documents and indexes to be made public.**

20 (1) . . . To the extent required to prevent an unreasonable invasion of personal privacy
 21 interests protected by this chapter, an agency shall delete identifying details in a manner
 22 consistent with this chapter when it makes available or publishes any public record;
 however, in each case, the justification for the deletion shall be explained fully in
 writing.

TABLE OF AUTHORITIES

42.56.110 Destruction of information relating to employee misconduct.

Nothing in this chapter prevents an agency from destroying information relating to employee misconduct or alleged misconduct, in accordance with RCW **41.06.450**, to the extent necessary to ensure fairness to the employee.

[1982 c 208 § 13. Formerly RCW 42.17.295.]

42.56.230 Personal information.

3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(7)(a) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicard.

42,56,250

(3) The following information held by any public agency in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency: Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, driver's license numbers, identicard numbers, and emergency contact information of employees or volunteers of a public agency

42.56.280 Preliminary drafts, notes, recommendations, intra-agency memorandums

in which opinions are expressed or policies formulated or recommended are exempt under this chapter, except that a specific record is not exempt when publicly cited by an agency in connection with any agency action.

[2005 c 274 § 408.]

1 **42.56.290 Agency party to controversy.**

2 Records that are relevant to a controversy to which an agency is a party but which records
3 would not be available to another party under the rules of pretrial discovery for causes
4 pending in the superior courts are exempt from disclosure under this chapter.

5 **RCW 42.56.410** "Records maintained by the employment security department and subject to
6 chapter 50.13 RCW if provided to another organization for operational, research, or
7 evaluation purposes are exempt from disclosure under this chapter."

8 **RCW 42.56.540 Court protection of public records** "The examination of any specific
9 record may be enjoined if . . . would clearly not be in the public interest and would
10 substantially and irreparably damage any person . . ."

11 **42.56.590 Personal information—Notice of security breaches.**

12 (2) Any agency that maintains data that includes personal information that the agency does
13 not own shall notify the owner or licensee of the information of any breach of the security of
14 the data immediately following discovery, if the personal information was, or is reasonably
15 believed to have been, acquired by an unauthorized person.

16 (5) For purposes of this section, "personal information" means an individual's first name or
17 first initial and last name in combination with any one or more of the following data
18 elements:

19 (a) Social security number;

20 (b) Any agency that violates, proposes to violate, or has violated this section may be
21 enjoined.

22 (c) The rights and remedies available under this section are cumulative to each other and to
any other rights and remedies available under law.

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2 **TABLE OF AUTHORITIES**
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4 **42.56.600 Mediation communications.**

5 Records of mediation communications that are privileged under chapter **7.07** RCW are
6 exempt from disclosure under this chapter.
7

8 [**2006 c 209 § 15.**]
9

10 **7.07.**

11 (5) Records of mediation communications that are privileged under this chapter are exempt
12 from the requirements of chapter **42.56** RCW.
13

14 **7.07.070**

15 **Confidentiality.**

16 Unless subject to chapter **42.30** RCW, mediation communications are confidential to the
17 extent agreed by the parties or provided by other law or rule of this state.
18

19 **RCW 51.28.070** “Information contained in the claim files and records of injured workers,
20 under the provisions of this title, shall be confidential and shall not be open to public
21 inspection. . .”
22

16 **University of Washington,**

17 **WAC 478-276-085**

18 **Responses to public records requests.**

19 (1) **Responses generally.** The public records office shall respond within five business days of
20 receiving a public records request by:

21 (a) Providing the records;

22 (b) Providing an internet address and link to the records on a university web site;

23 (c) Acknowledging that the request has been received and providing a reasonable estimate of
24 the time required to respond to the request; or

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2 TABLE OF AUTHORITIES
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4 d) Denying the request.
5

6 (2) **Additional time.** Additional time for the office to respond to a request may be based
7 upon the need to:

8 (a) Clarify the request;

9 (b) Locate, assemble, and review the records requested;

10 (c) Notify third persons or agencies affected by the request; or

11 (d) Determine whether any of the information requested is exempt and that a denial should be
12 made as to all or part of the request.

13 **478-276-090**

14 **Notice of availability.**

15 (1) **Notice of availability generally.** Once records responsive to a request (or any installment
16 thereof) have been located, assembled, reviewed, and prepared for release, and any affected
17 third persons or agencies notified, the public records office shall promptly notify the
18 requestor that those records are available for inspection or copying.

19 **478-276-095**

20 (4) **Protection of public records.** Access to records during viewing appointments shall be
21 restricted to the viewing area designated by the public records office. No document shall be
22 physically removed by a member of the public from the viewing area for any reason
whatsoever; nor shall any member of the public who is viewing documents disassemble,
deface, or cause the disorganization of any record for any reason whatsoever.

23 University of Washington policy ([http://hr.uw.edu/policies/providing-work-references-to-](http://hr.uw.edu/policies/providing-work-references-to-prospective-employers/)
24 [prospective-employers/](http://hr.uw.edu/policies/providing-work-references-to-prospective-employers/)) states : “so long as the disclosed information relates to: 1. An
employee’s ability to perform his or her job; 2. The diligence, skill, or reliability with which

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an employee performs or performed his or her job; or 3. Any illegal or wrongful act an employee committed in relation to his or her job duties.” “The presumption of good faith can only be effectively challenged if a current or former employee can show by clear and convincing evidence that information the employer disclosed was knowingly false, deliberately misleading, or made with reckless disregard for the truth.” and “the law states that a supervisor or manager who provides it should retain a written record in the employee’s personnel file of the identity of the person or entity to which reference information is provided...” “Do not provide medical information even if an employee voluntarily disclosed it to you.” “Do not provide information about an employee that is not directly work related.”

I. INTRODUCTION

Plaintiff asserts that the University of Washington (UW), in response to public records (PR) requests in 2015-2017, published documents containing personal and confidential information pertaining to Plaintiff, that are statutorily exempt from disclosure pursuant to the Public Records Act (RCW 42.56), and provided these to unauthorized persons in violation of RCW 42.52.050(3). The UW's release of records violated additional state laws (RCW 41.06.450 for retention and destruction of records; RCW 49.60.180 for discrimination and unfair practices of employers; RCW 51.28.070 for breach of confidentiality of records of injured workers; RCW 7.96 for defamation), Washington Administrative Code (WAC 478-276-085, WAC 478-276-090; WAC 44-14 Public Records Act Rules), and Federal statutes including 45 CFR part 160 & 164, 20 U.S.C 1232g(a)(4), 34 CFR Part 99, 5 U.S.C. 552(b)(6), and the negligent release of information violated her constitutional right to privacy and RCW 42.56.050 (state employee right to privacy).(*Dkt.2- 1 p. 10-28*)

In 2015-2017, UW also published a settlement Agreement between the Parties, and reproduced, maintained and published certain documents, in breach of the agreement and regardless of statutory exemptions. Additionally, Plaintiff asserts that the Agreement contains terms barring her rights to publicize the terms, and to complain about discrimination based on age or disability, in violation of RCW 49.60.180, RCW 49.44.090, RCW 49.60.210 and RCW 49.60.220, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and Title VII of the Civil Rights Act, 42 U.S.C. 2000e-2, ch 76; 42 U.S.C. 1981; and 42 U.S.C. 1983,*(id)*

1 Plaintiff asserts that UW has violated RCW 40.14, WAC 478-276-095 and UW policies
 2 for records retention and destruction, and has compiled, published, distributed and left open for
 3 public inspection malicious, deliberately misleading, libelous and defamatory records and
 4 opinions concerning Plaintiff, in violation of RCW 42.40, RCW 42.52.050(3), RCW 41.06.450,
 5 RCW 42.56.050, RCW 7.96 and 42 U.S.C. sec 1981. (*id*)
 6

7 Further, Plaintiff asserts that pursuant to RCW 42.40 (State employee whistleblower
 protection), Plaintiff has the right to confidentiality in this case. (*id*)
 8

9 **II. EVIDENCE RELIED UPON**

10 **The evidence must be viewed favorably to the nonmoving party. *Guijosa v. Wal-Mart***

11 ***Stores, Inc., 144 Wn.2d 907, 915, 32 P.3d 250 (2001)***

- 12 • Court Records Dkt 2-1(complaint), 1(removal), 4(answer) 15(JSR), 27, 29-1, 30-1, 30-2, 30-3,
 30-4, 30-7, 30-8, 30-9, 32, 33, 34, 36, 37, 37-4(Under seal), 37-5, 37-6, 37-7, and 38.
- 13 • Public Records: 15-00570, 16-00218, 16-00283, 16-00760, 17-00357, 17-00358, 17-00359
- 14 • Attached exhibits 1-5
- 15 • Declaration of Plaintiff (Julie Dalessio) and attached exhibits

16 Plaintiff Objects to exhibit A of Declaration of Alison Swenson¹ and moves to strike.
 17

18 Plaintiff Objects to Dkt. 28-1 and 28-2, (FRCP 12, and ER 403) and moves to strike.
 19

20 **III. STATEMENT OF FACTS**

21 There are several issues of material fact, and the Evidence shows that there are genuine
 22 issues for trial, thus the UW motion for summary judgment should be denied.
 23

24 ¹Partial, altered copies (submitted as Exhibit A to Decl. Alison Swenson *Dkt. 30*) by UW as Dkts.30-1, 30-2,
 30-3, 32, 33, 34. Plaintiff has addressed objections to these in Motion to Seal records (*Dkt. 36*)

1 **A. PUBLIC RECORDS RELEASE**

2

3 The parties do not agree that the Defendant UW is liable for the tortious actions of its
 4 employees.

5 **1. UW provided personal, confidential information to unauthorized persons.** In
 6 November and December 2015, the UW published records pertaining to the Plaintiff in PRs
 7 provided to third persons.

8 a) **PR 15-00570**² consisting of 370 pages, along with an 8-page exemptions log
 9 describing 101 additional pages, was provided to David Betz and Impact Law Group, in
 10 response to a request for “all records maintained by the University of Washington relating or
 11 pertaining to” Plaintiff (*Dkt. 30-4 p.2*). The Plaintiff was the Defendant in an unfounded
 12 adverse possession lawsuit brought by Betz against her. Plaintiff Objects and Moves to strike
 13 Dkt. 28-1 and 28-2 as immaterial (FRCP 12), and “its probative value is substantially
 14 outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury”
 15 (*ER 403*). Betz produced the records provided to him by the UW, to be used as evidence
 16 against Plaintiff, (Exh. 1 at #60, 61, 62) purportedly to impugn her “credibility.”³ The
 17 Plaintiff suffered damages including the costs for her attorney to respond to this PR release.
 18 (*Dkt. 2-1 p.15*)

19 b) Plaintiff was a classified staff employee and also a student at the UW in the
 20 Master of Laboratory Medicine program in 1992-1993 when some of these documents were
 21 generated. (*Dkt.30-1 p.88 and Decl Plaintiff*). The UW claims to have “research(ed)

22 ² Altered portions in *Dkts. 30-1, 30-2, 32, 33, and 34*

³ Court records

1 individual names on documents to determine whether they may be students . . ” (Dkt 27 at p.
 2 3, line 18) yet the cited exhibit gives no evidence of this. The UW email address cited in
 3 Betz’s Public Records request (Dkt.30-9, p.6) is Plaintiff’s student/alumni email.(*id*).
 4

5 c) UW has admitted that staff failed to redact Plaintiff’s Social Security Number (Dkt
 6 27; P.4, line 1) in the records supplied to Betz (PR 15-00570), yet has objected to admissions
 7 of the facts that UW **also** published the following statutorily exempt information: Eleven
 8 copies of Plaintiff’s SSN; Date of Birth, Home phone, Name change Information, Payroll
 9 records, Employment Security Records, Employee Identification Number, Handicap status,
 10 Health Information, Information related to **alleged** misconduct, Intra-corporate
 11 communications in which opinions are expressed, Mediation communications, Information
 12 contained in the claim files of injured workers(including L&I claim#), Performance
 13 evaluation, Employee job classification, Salary information, Benefits information, Personal
 14 information, Information in which it could be possible to determine that the Plaintiff was
 15 receiving healthcare, Personal Leave records, Continuing education records, Privileged
 16 information. (Dkt. 32, 33, 34) The UW claims to have complied with policies and regulations
 17 for Public Records Releases,⁴ yet the PR contains proof of numerous violations. See
 18

Plaintiff’s Exhibit 2 and corresponding Table of Authorities (p.4-11 herein) detailing

19 ⁴ UW has objected to requests for production of all relevant training materials, handbooks, policies and to RFP
 NO. 23: Please produce all documents referring to, regarding, and/or related to redaction of information
 pursuant to Public Records requests and said production of documents.

20 **“RESPONSE: OBJECTION.** Overbroad; Vague; Unduly Burdensome; Relevance. It is unclear if Plaintiff is
 request all documents the University as a whole has “referring to, regarding, and/or related to redaction of
 information” for Public Records Requests, or if this request is limited in scope to documents that compliance
 analysts have. The former is potentially unlimited as many employees receive public records training.
 Defendant would need Plaintiff to define the scope of her request to allow it to answer, if possible. Without
 waiving said objection, the University of Washington redacts documents pursuant to the Washington Public
 Records Act, RCW 42.56.”

1 exemptions for documents that were improperly provided to unauthorized third persons.

2 d) On March 25, 2016, upon learning about Betz's request for records concerning her,
 3 Plaintiff submitted a public records request for copies of the discs he was given. (*Dkt. 30-8 p.*
 4 2) UW responded with PR 16-00218. (*id p. 3*) Upon receipt on April 8, 2016, Plaintiff
 5 discovered that UW had provided confidential information (including her SSN and DOB).
 6 She informed the UW Office of Public Records (*Dkts. 30-8, 30-9*), the UW Ombud, and UW
 7 attorney general Rob Kosin of the improper release of records. After learning that none of
 8 these persons could or would act in any way to correct any mistakes or mitigate damages, the
 9 Plaintiff filed claims with the State of Washington Department of Enterprise Services and
 10 UW Office of Risk Management (October 21, 2016, Denied Feb. 2, 2017) Washington State
 11 Office of Human Rights, and EEOC.⁵ (*Decl. Plaintiff*) The Plaintiff has satisfied exhaustion
 12 requirements and this lawsuit was timely filed.

13 **2. Public Records Requests regarding UW employment records.**

14 a) On April 27, 2016, UW produced four pages of records, **PR 16-00283** (*Dkt.*
 15 *30-9*), in response to Plaintiff's request for records of those who had accessed her records
 16 since her resignation. The UW responded only with information regarding PR Requests. (*id*)
 17 The Request Summary Report (*Exh.3*) indicates that no records were found in Upper Campus
 18 Human Resources or payroll. Evidently, the Office of Public Records did not request
 19 information regarding accession of Plaintiff's records from any of the Departments which
 20 would have had custody of these records (UW Medicine, Laboratory Medicine Human

22 ⁵ The UW has disclosed their copies of these documents, but has objected to requests for admissions.

1 Resources, and the Department of Virology).⁶ The UW did not make a good-faith effort to
 2 respond to this Request for Records.
 3

4 **b) The UW responses to Public Records requests differ based on the purported
 5 identity of the requestor.**

6 On November 9, 2016, Plaintiff submitted a **Public Records Request** (PR 16-00760)
 7 for a copy of her “departmental personnel file, along with any other computer or paper files
 8 that might contain records of inquiries concerning my employment” (Dkt. 29-1 p.2)⁷ The
 9 Plaintiff hoped to identify the **portion** of documents provided in response to Betz’s request
 10 for “*all records* maintained by the University of Washington relating or pertaining to”
 11 Plaintiff (*Dkt.30-4, p.2.*, ***emphasis added***). The Plaintiff hoped to ascertain what portion of
 12 “*all records*” were provided to potential employers who enquired concerning her
 13 employment in the Dept. of Laboratory Medicine, Virology Division at the UW. The
 14 Plaintiff did not provide any proof of her id with any requests.

15 In January and February 2017, UW again published personal, confidential
 16 information in PR 16-00760 (Dkt. 38, under seal) containing a total of **1142** pages. This is, in
 17 fact, 671 pages more than those produced plus those withheld in response to Betz’s request
 18 for “all records”(*Dkt. 30-4, p.2 and 30-7 p.4*). PR 16-00760 is **not** a non-redacted copy of
 19 the records produced in PR 15-00570 as Defendant might attempt to lead you to believe, but
 20 a **different assortment and selection** of documents, proving that different documents were
 21 selected based on the identity of the requestor. Also of note, the Request Summary Report

22⁶ The UW has objected to Discovery requests for this information.

⁷ NOT a “Request for All of Her Employment Records” as claimed by Defendant (Dkt 27 P. 4, line 22).

1 for PR 16-00760 (*Exh. 4*) indicates that 2591 pages were received, eighteen pages were
 2 irrelevant, and 1142 pages were granted. UW did not provide any explanation regarding
 3 exemptions for the 1431 pages that were not granted in the PR Release.
 4

5 **c) Public Dissemination of Confidential Employee Information**

6 The UW has no qualms about “publicly re-disseminating records or information Plaintiff
 7 claims should never have been released.” (*Dkt 27 P. 5, line 24*)⁸ The UW has selected,
 8 manipulated and compiled these as PRs of Plaintiff’s employment history, and has not
 9 expressed any willingness to mitigate damages (*Decl Plaintiff*), or to comply with applicable
 10 statutes and policies, thus indicating that the UW intends to continue publishing these
 11 records.

12 In order to determine if it is the habit of the UW to provide employees’ personal,
 13 confidential records to anyone making a PR Request for “all records pertaining to” specified
 14 employees, the Plaintiff requested the records of a few, specified employees.⁹ In response,
 15 UW provided PRs 17- 357, 17- 358, 17 -359 (a few records from these are contained in *Dkts.*
 16 37-5, 37-6, 37-7) containing employee’s personal information including height, weight,
 17 veteran status, date and place of birth, tobacco use, handicap status, medical test results,
 18 marital and family information necessary for calculating health plans, job benefits, and
 19 taxes(including birth certificates, W-4), insurance policy information (including policy
 20 numbers), L&I information and claim numbers, disabilities and accommodations

21 ⁸ The UW entered PR 15-00570 into the court record, despite the Plaintiff’s claims of confidentiality.

22 ⁹ Ten employees that were identified in PR 15-00570 as Clients of the Disability Services Office, and 2 current
 employees working in positions similar to the Plaintiff’s former job. The Plaintiff disclosed these PR requests
 to Counsel for UW.

1 information, records of alleged misconduct, work and leave records, payroll records,
2 personal, medical and family leave information, reasons for leaving employment. records
3 relating to health, all in conjunction with the employee's name and Id number. Many of these
4 documents are specified as confidential.(*id.* see highlights)
5

6 It is the habit of the UW to provide confidential employee information to anyone in
7 response to PR requests for "all records pertaining to" specified employees.
8

9 **B. BREACH OF CONTRACT**

10 1. Dkt #30-3 is a copy of an undated "settlement agreement" signed by the Plaintiff upon
her resignation after 16 years of employment with the UW.
11

12 2. The parties agreed "not to publicize the terms of this agreement" (Dkt.30-3. p.4 #16).
The UW breached the agreement by publishing this agreement in PR 15-00570, PR
13 16-00218, PR 16-00760 and in the public court records (see *Dkt.36 p.3*).
14

15 3. The Settlement Agreement states "There is a dispute between Dalessio and the
University with regard to Dalessio's employment relationship with the University of
16 Washington."(Dkt.30-3 p.2 at "Statement of Dispute.") That is the only subject of dispute.
17

18 4. The UW agreed to withdraw certain documents from Plaintiff's "official Personnel
Department file and from all Department of Laboratory Medicine files." (*Id* p.2. #2). The
19 Plaintiff has identified 37 copies of these documents that Defendant UW, in fact, failed to
20 remove from their files, and subsequently produced in PRs. (*Dkt. 37 p.6 at line 9 and footnote*
21
22

1 7).¹⁰ (*Exh. 5 and Dkts. 37-4 and 38, under seal, and Decl. Plaintiff*)

2 5. The agreement states: “Should this Agreement need to be enforced in court, both
 3 parties agree to jurisdiction and venue in King County Superior Court.” (*Dkt. 30-3 p.3 at*
 4 *#11*). The Plaintiff filed this lawsuit in King County Superior Court, Defendant UW removed
 5 the lawsuit to this Court. (*Dkt. 1*)

6 6. Significant evidence arose in 2015-2016 PR releases indicating that UW also breached
 7 terms requiring: “If contacted by the Employment Security Department, the University shall
 8 decline to give any response” (*Dkt. 30-3 p.3 #6, and Decl. Plaintiff*).
 9

C. Libel/ Slander/Defamation Negligence, Malice

10 Plaintiff objects to Dkt 27 P. 5, line 25 as deliberately misleading. Dkt 15 is not a
 11 request that discovery be stayed, it’s a Joint Status Report improperly filed by Counsel for
 12 UW. The UW has responded to two sets of discovery requests with objections, dismissive
 13 assertions, and derogatory mis-characterizations regarding Plaintiff’s intentions. The Plaintiff
 14 has requested production of relevant documents, and admissions of general descriptions to
 15 avoid publicly re-disseminating information that should not be associated with her name.
 16

17 The UW has again published these objectionable, libelous and defamatory documents
 18 (PR 15-00570) via the Court Records, which are readily available on the internet (linked to
 19 her name in Search engines) as exhibits in this case (*Dkt 30-1, 30-2, 30-3, 32, 33, 34*), in
 20 essence, publishing a world-wide permanent record that UW discriminately (whether

21 ¹⁰ The UW has objected to all requests to produce and identify locations or custodians of these documents and
 22 to admit descriptions of these documents, stating “Defendant lacks sufficient knowledge to determine to either
 admit or deny, and therefore denies the same.” The UW did not include any statements with their objections
 concerning any attempts to make “reasonable inquiry” to determine “that the information known or readily
 obtainable by the answering party is insufficient to enable the answering party to admit or deny” as required
 under CR 36. The UW has improperly objected and failed to respond properly to all discovery requests.

maliciously and/or negligently) selected, manipulated, compiled, and preserved to discredit the Plaintiff.(Decl. Plaintiff) Substantial evidence of both negligence and malice has been produced.

D. CIVIL AND EMPLOYMENT RIGHTS

The 2003 Agreement between the Parties contains terms that specifically bar the Plaintiff's rights to publicize the terms of the agreement, (*Dkt. 30-3 p.4 at #16*) and to complain about discrimination based on age or disability. (*id, p.3 at #7*) The Plaintiff has thus far based her claims on the fact that the Settlement Agreement, containing these terms, currently in effect, arose with 2015-2017 PR releases, along with additional evidence of discrimination and retaliation. (Decl Plaintiff)

1. The conduct complained of was committed by persons acting under color of state law. The Defendant has admitted that “all actions of the Defendant herein alleged manifest a reasonable exercise of judgment and discretion by authorized public officials made in the exercise of governmental authority entrusted to them by law . . .” (*Dkt. 4 p. 11*)

2. The Plaintiff has satisfied all Exhaustion and Service requirements and these claims were timely filed, less than one year after these actions arose, and these actions are continuing.

IV. ARGUMENT AND ANALYSIS

Plaintiff Objects to Defendant's characterizations at Dkt 27 p. 5 lines 15-17 and footnote #7.¹¹ Plaintiff has described additional evidence in her initial disclosures and has

¹¹ In fact, The UW has objected and failed to respond to all requests to produce or identify any documents, the locations or the custodians of these documents, instead producing more copies of copies of documents.

1 requested production of additional information.¹²

2 The Evidence that is already admitted proves that there are genuine issues for trial, thus
3 Plaintiff's claims should go forward.

4 **A. "Good Faith" Immunity Doctrine Does Not Bar any of Plaintiff's Claims.**

5 The "Good Faith" Immunity Doctrine under the Public Records Act (*RCW 42.56.060*)
6 only applies *if* the employee "acted in good faith" and only applies to actions "in attempting
7 to comply with the provisions of this chapter." Therefore, this cannot apply to All of
8 Plaintiff's Claims.

9 1. According to the Department of Enterprise publication (des.wa.gov), RISK
10 MANAGEMENT BASICS, May 2017, p. 36 regarding Security Breaches "If confidential
11 information (defined as a person's name in combination with specific data such as Social
12 Security number)" is inappropriately disclosed, RCW 42.56.590 "allows anyone injured by
13 the breach to take civil action against the agency."

14 "The state of Washington, whether acting in its governmental or proprietary capacity,
15 *shall be liable for damages* arising out of its tortious conduct to the same extent as a private
16 person or corporation." *RCW 4.92.090 Act of March 25, 1963, ch. 159, 1963 Wash. Sess.*
Laws 753 (codified as amended at WASH. REV. CODE § 4.92.090 (2004)) (emphasis added).

17 Discretionary immunity is confined to government conduct at the *policy-making*
18 level, as opposed to the operational levels,

19 "decisions which are essential to the realization or attainment of the basic *policies and*
20 *objectives . . .*" *Evangelical*,⁶⁷ 2d at 260,407P.2dat447-48, italics added.

21 In *Osborn v. Mason County*, the court stated,

22 ¹² Defendant has objected, citing: "relevance; unduly burdensome; not reasonably calculated to lead to discovery of admissible evidence; not proportional to the needs of the case."

1

"Because a public entity is liable in tort "to the same extent as if it were a private person or corporation," former RCW 4.92.090 (1963) *and* former 4.96.010 (1967) (municipality), the public duty doctrine does not-cannot-provide immunity from liability. Rather it is a "focusing tool" we use to determine whether a public entity owed a duty to a "nebulous public" or a particular individual. The public duty doctrine simply reminds us that a public entity like any other defendant is liable for negligence only if it has a statutory or common law duty of care. And its "exceptions" indicate when a statutory or common law duty exists. "The question whether an exception to the public duty doctrine applies is thus another way of asking whether the State has a duty to the plaintiff." *Osborn v. Mason County* 157 Wash. 2d at 27-28. 134 P.3d at 202 (*citations omitted*).

The UW failed to adhere to the Public Records Act, provided documents specifically exempted from public records releases, violated several regulations and policies for the preservation, maintenance, security, redaction, and release of Employee records. As this conduct is attributable to managerial acts and was not lawful, discretionary immunity is not applicable.

Actions taken or challenged under the PRA are subject to de novo review, and any person "who prevails against an agency" is awarded costs and fees and, in the discretion of the court, a statutory penalty. RCW 42.56.550(4).

2. The UW Public Records Releases contain frivolous, **and** malicious information,(*Dkt. 32, 33, 34, 38 and Decl. Plaintiff*) **and** were provided with reckless disregard for the truth, and selected for production based on the identity of the person requesting the records. There is substantial evidence that UW deliberately manipulated Plaintiff's employee records to mislead investigators, knowingly omitted relevant information, and produced deliberately misleading and false information in Public Records.

RCW 42.40.020(3) "An individual who knowingly provides or reports, **or** who reasonably **ought to know** he or she is providing **or** reporting malicious, false, **or** frivolous information,

or information that is provided with reckless disregard for the truth, **or** who knowingly omits relevant information is not acting in good faith.” (emphasis added)

The UW Office of Public Records should have known that malicious, false or frivolous information is statutorily exempt from PRs. The UW Offices of Human Resources (Upper Campus, UW Medicine, and Laboratory Medicine) should have known that these records were not to have been placed in personnel files (ref), and Plaintiff's Supervisor, UW Virology and/or Laboratory Medicine Human Resources should have known their responsibilities for maintaining employee records. The UW did not act in good faith.

B. THE CONDUCT OF THE UW VIOLATED STATUTORY AND CONSTITUTIONAL RIGHTS to Privacy

Plaintiff objects to Dkt.27 p.12, lines 6-13 (impertinent), UW's nonsensical projections regarding Plaintiff's arguments, and objects to lines 20-22 (false). Plaintiff has claimed violations of her rights to privacy and to protection from discrimination.(Dkt. 2 p.9)

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”(42 U.S.C. § 1983)

The PRA exempts from disclosure

“[p]ersonal information in files maintained for employees, appointees, or elected officials of any **public** agency to the extent that disclosure would violate their right to privacy.” RCW 42.56.230(3). The UW has a **duty** to protect the **privacy** of its employees, to ensure the security of employees’ personal information, and to maintain and produce the public record in accordance with all applicable regulations and policies. The UW breached those duties by a) releasing personal, confidential information to unauthorized persons in violation of RCW 42.52.050(3); b) discriminately selecting documents and manipulating Plaintiff’s employee

1 records for public disclosure based on the identity of the requestor, in violation of RCW
 2 42.56.050; c) violating Plaintiff's right to privacy with the disclosure of information that "(1)
 3 Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the
 public" (RCW 42.56.050) *see also Hearst v. Hoppe, 90 Wn.2d 123, 580 P.2d 246 (1978).*

4 RCW 42.17.310(1)(b) exempts "[p]ersonal information in files maintained for
 5 employees." "[T]he basic purpose and policy of RCW 42.17 was 'to allow public scrutiny of
 government, rather than to promote scrutiny of *particular individuals* who are *unrelated to*
 6 *any governmental operation.*" *Cowles*, 44 Wn. App. at 897-98 (quoting *Rosier*, 105 Wn.2d at
 611) (alteration in original).

7
 8 "[T]he disclosure of a public employee's [s]ocial [s]ecurity number would be highly
 9 offensive to a reasonable person and not of legitimate concern to the public. Also, residential
 addresses and telephone numbers of employees of public agencies are independently exempt
 from disclosure under RCW 42.17.310(1)(u)." PAWS, 125 Wn.2d at 254.

10
 11 The UW cannot truthfully deny that they disclosed Plaintiff's personal information
 12 (including DOB and SSN) as described (*Exh. 2*) and verified (*Dkts. 32,33,34*) to unauthorized
 13 persons (Betz and Impact Law Group) (*Dkt. 30-7*) and to the public (in Court filings and in
 14 Public Records). The UW PR releases of Personal, Confidential and frivolous records is
 15 Offensive, Not in the Public Interest, and resulted in invasion of the Plaintiff's privacy.

16
 17 **C. 28 U.S.C. § 1367 provides for federal supplemental jurisdiction over all other claims**
 18 **in this action.** Plaintiff has cited HIPAA, FERPA and FOIA cases and regulations as
 19 supplemental authority for her state claims.¹³

20 All Potential Federal Claims should be supplemented to the Plaintiff's current claims.
 21 Plaintiff originally filed this lawsuit in King County Superior Court. The Defendant UW

22¹³ Additionally PR 16-00760 includes private emails between Plaintiff's supervisor and other students.(ref)

1 removed this case to Federal Court. (*Dkt. I*)

2 D. **Libel/ Slander/Defamation**

3 Defamation includes both libel and slander. Black's Law Dictionary, at 288 (6th ed. 1991).

4 "A communication is defamatory if it tends so to harm the reputation of another as to lower
 5 him [or her] in the estimation of the community **or to deter third persons** from associating or
 6 dealing with him [or her]." *Right-Price Recreation, LLC v. Connells Prairie Cnty. Council*,
 7 146 Wn.2d 370, 382, 46 P.3d 789 (2002) (quoting Restatement (Second) of Torts § 559
 8 (1977), emphasis added). The elements of a defamation claim are falsity, an unprivileged
 9 communication, fault, and damages. *LaMon v. Butler*, 112 Wn.2d 193, 197, 770 P.2d 1027
 10 (1989), also *Mohr v. Grant*, 153 Wn.2d 812, 822, 108 P.3d 768 (2005).

11 Dkt. 34 p. 97 is evidence of all four elements. The letter contains false information regarding
 12 removal of certain letters from UW files (evidence detailed above), it was produced to
 13 unauthorized persons (Betz and the Public), the fault lies with employees of UW, and
 14 Plaintiff has suffered damages. Plaintiff provides further evidence. (*Decl. P*)

15 Defamation by implication occurs when

16 " 'the defendant juxtaposes a series of facts so as to imply a defamatory connection between
 them, or creates a defamatory implication by omitting facts.' " *Id.* at 823 (quoting Prosser and
 17 Keeton on the Law of Torts § 116, at 117 (W. Page Keeton ed., 5th ed. 1Supp. 1988)). 5 (c) 1.

18 A false light claim arises when "someone publicizes a matter that places another in a false
 19 light if (a) the false light would be highly offensive to a reasonable person and (b) the actor
 20 knew of or recklessly disregarded the falsity of the publication and the false light in which
 21 the other would be placed." *Eastwood*, 106 Wn.2d at 471.

22 See attached Decl. Plaintiff detailing additional evidence of falsity and false light

1 defamation in the PRs.

2 Gonzaga Univ. v. Doe, 536 U.S. 273 (2002)

3 “The court found that the university and its employees could be liable on defamation claim
 4 even though the statements in question were only made among university personnel and not
 5 among those outside the university’s community. The court also found that the evidence
 6 supported that the University had invaded plaintiff’s privacy. Although the University
 7 claimed that there was nothing “highly offensive” about its attempts to determine the facts
 about John Doe’s relationship with Jane Doe, jury was “presented with sufficient evidence of
 investigative activities to determine that John Doe’s privacy had been invaded, and that such
 an intrusion would be highly offensive to a reasonable person.”¹⁴

8 There is substantial evidence that UW manipulated Plaintiff’s records for the purpose of
 9 impugning her reputation, to present these records to third persons.

10 Plaintiff objects to Dkt 27, p. 14, lines 6-7(Deliberately misleading, untrue). The Plaintiff
 11 has complained of numerous records that were provided in PR 15-00570 to Betz (Dkt. 30-9
 12 p.2; Dkt. 2-1, p.10). (*See also exhibit 2 describing PR 15-00570 docs and exemptions*)

13 Plaintiff objects to Dkt. 27 p.13 lines 15-16 and footnote(impertinent, misleading).
 14 Plaintiff asserts that her records were obviously altered for the purpose of presenting to third
 15 persons. Plaintiff objects to Dkt 27 p.13 line 22(false). It is **not** undisputed - Plaintiff **does**
 16 have a privacy interest in the publication of these records in association with her name. (*See*
 17 *Exhibit 2 and Table of Authorities, p. 4 herein, detailing privacy interests*)

18 PR 16-00760 (Dkt. 38) was produced as a public record of Plaintiff’s departmental
 19 personnel file. This was not assembled for the Plaintiff’s benefit and bears no resemblance to
 20 the file that existed in 2002. (*Decl P*) WAC 478-276-095 states that no-one shall
 21 “disassemble, deface or cause disorganization of any record.” The PRs presented thus far

22 ¹⁴ <http://www.withoutmyconsent.org/50state/state-guides/washington/common-law>

1 provide substantial evidence of disorganization, Plaintiff provides additional evidence of
 2 violations.(*id*)

3 Plaintiff had no reason to think that the UW would be negligent in their oversight of
 4 Employee records, that the UW would recklessly and/or maliciously compile, preserve,
 5 distribute and publish deliberately misleading, defamatory, unfounded and UNTRUE records
 6 concerning her.(*id*)

7 individuals have an interest in receiving notice and being heard “[w]here a person's good
 8 name, reputation, honor, or integrity is at stake because of what the government is doing to
 him.” *Wisconsin v. Constantineau*, 400 U.S. 433, 437, 91 S. Ct. 507, 27 L. Ed. 2d 515
 9 (1971))

10 While the UW might not be legally obligated to notify persons specified in PR requests
 before records releases, it would be prudent for them to adhere to WAC 478-276-090(1) and
 11 to do so.

12 E. NEGLIGENCE/ MALICE

13 An act is negligent if there is a duty owed, a breach of that duty, and an injury
 proximately caused by that breach. *Ruff v. King County*, 125 Wn.2d 697, 704, 887 P.2d 886
 15 (1995). To show negligent infliction of emotional distress in the workplace, the plaintiff must
 16 show "(1) that [his or] her employer's negligent acts injured [him or] her, (2) the acts were
 not a workplace dispute or employee discipline, (3) the injury is not covered by the Industrial
 18 Insurance Act, and (4) the dominant feature of the negligence claim was the emotional
 19 injury." *Snyder v. Medical Serv. Corp.*, 98 Wn. App. 315, 323, 988 P.2d 1023 (1999), aff'd,
 20 145 Wn.2d 233, 35 P.3d 1158 (2001).

21 The UW negligently compiled and published records related to the Plaintiff. These
 22

1 acts have resulted in damages (*Decl. P.*), were the result of PR releases, not covered by
2 Industrial Insurance, and the dominant feature of the claim is the emotional injury.
3

4 Where a private individual is involved, fault is established under negligence
5 principles by showing “the defendant knew or, in the exercise of reasonable care, should
6 have known that the statement was false, or would create a false impression in some material
7 respect.” *Taskett v. KING Broad. Co.*, 86 Wn.2d 439, 445, 546 P.2d 81 (1976); *Moe v. Wise*,
8 97 Wn. App. 950, 957, 989 P.2d 1148 (1999)

9 As a private individual, Plaintiff argues that she need only prove that these documents
10 were negligently produced. (*Hitter*, 66 Wn. App. at 400) Plaintiff describes these facts (*Decl.*
11 *P.*) and can produce additional evidence of malice if required to support her claims.

12 The records produced to Betz include all of the documents that Defendant denies in
13 Dkt. 27 p.14-15. As there is no evidence of any findings of misconduct, any inferences of
14 misconduct in the records are merely alleged and thus are exempted from public disclosure.
15 (Table of Authorities #14) While documents pertaining to her health (Dkt 34 pp. 71-73,
16 63-65, 80-82, and 102-105) were highly redacted, it is still obvious that they pertain to her
17 health (“Temporary Accommodations Letter” and “current medical restrictions” and
18 “healthcare Provider” and “physician” all appear on the first page), and thus exempt from
19 disclosure. The redactions actually add to the demeaning, misleading and defamatory nature
20 of the documents. One of the letters shows that it was sent from Plaintiff’s student/alumni
21 email. (Dkt 34 p. 102) While information about public employees’ compensation is and
22 should be subject to disclosure (to allow public review of government functions and to reveal

1 discriminatory practices), when this information is provided in conjunction with individual
 2 names that individual has a privacy interest. (*Table of Authorities, p. 4 herein*) The Courts
 3 have found that these types of unauthorized disclosures constitute invasion of privacy. (*id*)
 4

5 In addition to the evidence regarding UW PR releases and Breach of the Settlement
 6 Agreement, the Plaintiff provides supplementary evidence of negligence. (*Decl. P*)

7 F. Civil Rights Violations, Discrimination, Retaliation

8 Any UW settlement agreements that deny a person's civil rights to complain of
 9 discrimination are unconstitutional. Plaintiff has requested that UW produce all settlement
 10 agreements that were entered into by UW employees upon termination of employment with
 11 the UW, starting with the present and continuing back (the first 30 documents responsive to
 12 this request) calculated to lead to the discovery of the habits of the UW in "ending"
 13 employment relationships.¹⁵

14 1. Plaintiff's civil rights, discrimination and retaliation claims arose in 2015 when the
 15 UW chose to include the confidential Settlement Agreement, including terms barring her
 16 rights to complain of discrimination based on Age and Disability (*Dkt. 30-3, p. 3, #7*), along
 17 with other personal, objectionable documents in a PR provided to third parties. Plaintiff's
 18 Claims are based on the 2015-2017 actions of the UW that resulted in invasion of her
 19 privacy. There is substantial evidence, these claims were timely filed, and Plaintiff has
 20 satisfied all exhaustion requirements, thus this claim should go forward.

21 ¹⁵ "RESPONSE: OBJECTION. Relevance; Not reasonably calculated to lead to the discovery of admissible
 22 evidence; not proportional to the needs of the case; unduly burdensome; overbroad; vague ("First 30");
 duplicative" and "this is not a class-action lawsuit, and Plaintiff's statement does not further describe how the
 requested documents are relevant to any element of any of her claims." (*in First RFAs to Defendant*)

1 **2. Plaintiff has no wish to relitigate her employment relationship with the UW.** The
2 Settlement Agreement (*Dkt 30-3*) at “Statement of Dispute” states, in its entirety, “There is a
3 dispute between [Plaintiff] and the University with regard to [Plaintiff’s] employment
4 relationship with the University of Washington.” That is the only claim of dispute that is the
5 subject of the agreement. Plaintiff has no desire to seek re-employment with the UW.
6

7 Plaintiff Objects to Dkt 27 p. 10, lines 3-6, misinterpretation of Plaintiff’s complaint.
8 Plaintiff’s breach of contract claims are discussed above.
9

10 **3. The terms of the Settlement Agreement Specifically denote Age and Disability,
11 and Bar the Plaintiff’s Right to Complain about Such Discrimination.**

12 The terms of the Settlement Agreement(currently in effect) are clearly intended to restrict the
13 Plaintiff’s rights under the “Age Discrimination in Employment Act and/or the American
14 with Disabilities Act” (*Dkt. 30-3 p.3 at #7*). This is a direct violation of RCWs 49.60.180,
15 49.44.090, 49.60.220, 42.40.050, 42.40.020, ADA sec 503(b), and Title VII. But for
16 Plaintiff’s age and disability, these terms would not have been specified. This would be
17 highly offensive to anyone, thus this claim should go forward.

18 **4. Plaintiff’s employment claims**

19 a) **42 U.S.C sec. 1981 includes post-employment retaliation.** Plaintiff’s claims
20 thus far have been based on 2015-2017 actions of UW. Until Plaintiff’s records are restored,
21 this retaliation is ongoing.

22 b) In some cases a plaintiff may recover damages for injuries sustained outside the
23 limitations period. Generally, equitable circumstances that might toll a limitations period
24

1 involve conduct (by someone other than the claimant) that is misleading or fraudulent. Smith
 2 v. McClammy, 740 F.2d 925, 927 (11th Cir.1984) (Title VII case).

3 “Equitable tolling thus far has been allowed only in those cases where the government has
 4 hindered a claimant’s attempts to exercise her rights by acting in a misleading or clandestine
 5 way.” Wong v. Bowen, 854 F.2d 630, 631 (2d Cir.1988) .

6 Turner, 862 F.2d at 710; see also, Hill v. John Chezik Imports, 869 F.2d 1122, 1124 (8th Cir.
 7 1989) (noting that courts have generally reserved the remedy of equitable tolling for
 8 circumstances which are truly beyond the control of the plaintiff or when the conduct of the
 9 respondent has lulled the plaintiff into inaction).

10 “The employee must show that a reasonable employee would have found the challenged
 11 action materially adverse, meaning that it would have ‘dissuaded a reasonable worker from
 12 making or supporting a charge of discrimination.’” Burlington N. & Santa Fe Ry. Co. v.
White, 548 U.S. 53, 68, 126 S. Ct. 2405, 165 L. Ed. 2d 345 (2006).

13 The terms of the Settlement Agreement bar the Plaintiff’s rights to complain of
 14 discrimination, thus the statute of limitations has been tolled and these claims should be
 15 added to this case.

16 Adopting the reasoning in National R.R. Passenger Corp. v. Morgan, 536 U.S. 101,
 17 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002), the court in Antonius v. King County held that in
 18 a hostile work claim, an employer may be liable for acts of harassment which occurred
 19 outside the statute of limitations so long as one or more acts of harassment occurred within
 20 the limitations period. Antonius v. King County, 153 Wn.2d 256, 103 P.3d 729 (2005). It is
 21 the court's responsibility to determine whether acts “are part of the same actionable hostile
 22 work environment.” 153 Wn.2d at 271.

1 Plaintiff's employee records were likely manipulated in 2003, then were selected and
2 copied for public records release in 2015-2017. These actions were part of the same
3 actionable hostile work environment that resulted in the forced resignation of the Plaintiff in
4 2003. "A hostile work environment claim is comprised of a series of separate acts that
5 collectively constitute one 'unlawful employment practice.'" Morgan, 536 U.S. at 117
6 (quoting 42 U.S.C. § 2000e-5(e)(1)). For purposes of the statute of limitations, it does not
7 matter that some of the component acts of the hostile work environment fall outside the
8 statute of limitations period. Antonius, 153 Wn.2d at 264 (citing Morgan, 536 U.S. at 117).
9 Provided that a component act of the hostile work environment claim occurs within the
10 statute of limitations period, courts may consider the entire time period of the hostile
11 environment for the purposes of determining liability. Antonius, 153 Wn.2d at 264 (citing
12 Morgan, 536 U.S. at 117).

13 In some circumstances, there is a delay between the injury and the plaintiff's
14 discovery of it. If the delay was not caused by the plaintiff sleeping on her rights, courts may
15 apply the discovery rule. Crisman, 85 Wn. App. at 20. The discovery rule provides that a
16 cause of action does not accrue until the plaintiff knows, or in the exercise of due diligence
17 should have known, the factual bases of the cause of action. Hibbard, 118 Wn.2d at 744-45;
18 Allen v. State, 118 Wn.2d 753, 758, 826 P.2d 200 (1992).

19 At the time of her resignation, Plaintiff had no reason to think that the UW would not
20 comply with the separation agreement, would copy and distribute malicious and confidential
21 records to unauthorized persons, that her supervisor was emailing others her opinions about
22

1 the Plaintiff's use of her body(*Dkt.34 p. 66*) and joking with coworkers regarding Plaintiff's
 2 accommodations requests(*Dkt. 38, 00463A1510763.pdf*), that University employees were
 3 meeting and spreading untrue, derogatory opinions, discussing the Plaintiff's physical
 4 appearance and gossiping about Plaintiff's family(*id 00362-A1510699.pdf*), and that notes
 5 from this meeting would be copied and placed in her personnel file, along with multiple
 6 copies of selected, misleading documents, and that these records would be copied and
 7 distributed as her public record. (*Decl. Plaintiff*)

8 If the Court finds that justice requires that UW be held responsible for their actions,
 9 then Plaintiff should be allowed to supplement her claims for discrimination that occurred
 10 during her employment, for which substantial evidence has arisen in the 2015-2017 PRs.

11 Plaintiff describes evidence of retaliation based on her supervisor's perception of
 12 Plaintiff as a whistleblower as well as disparate treatment employment discrimination. (*Dkt.*
 13 *2-1 p.7 and Decl P*) The Plaintiff proves that she meets all elements for these claims.¹⁶
 14 Plaintiff was over 40 years old,¹⁷ had a documented disability (Public Records), was engaged
 15 in protected activities (*id*) in a hostile work environment(*id, Decl Plaintiff*), well qualified for
 16 the position and subjected to forced resignation, and deprived of her rights to complain of
 17 discrimination , her right to appeal, and her right to disclose the terms of the agreement(*id*
 18 and *Dkt 30-3*) and the PRs include substantial evidence that infer discrimination.
 19

20
 21 ¹⁶ *McDonnell Douglas* burden-shifting method. The plaintiff must first show that he or she (1) was in a
 22 protected group, (2) was qualified for the position in question, (3) was subjected to an adverse employment
 action, and (4) the circumstances support an inference of discrimination. *Kastanis*, 122 Wn.2d at 490-91.

¹⁷ UW has refused to admit this, but has admitted Plaintiff's year of birth is 1959.

1 ""When an employer's act violates both its own contractual just-cause standard and a clear
 2 and substantial public policy, we see no reason to dilute the force of the double sanction. In
 3 such an instance, the employer is liable for two breaches, one in contract and one in tort. It
 4 therefore must bear the consequences of both." Smith, 139 Wn.2d at 806 (quoting Rutherford
v. AT&T Communications of Mountain States, Inc., 844 P.2d at 960)(Utah1992).

5 See Smith, 139 Wn.2d at 804 ("What is vindicated through the cause of action is not the
 6 terms or promises arising out of the particular employment relationship involved, but rather
 7 the public interest in not permitting employers to impose as a condition of employment a
 8 requirement that an employee act in a manner contrary to fundamental public
 9 policy." (quoting Foley v. Interactive Data Corp., 47 Cal. 3d 654, 667 n.7, 254 Cal. Rptr. 211
 10 (1988)); see also id. at 809 ("As we have explained, the tort of wrongful discharge seeks to
 11 vindicate the public interest in prohibiting employers from acting in a manner contrary to
 12 fundamental public policy. Because the right to be free from wrongful termination in
 13 violation of public policy is independent of any underlying contractual agreement or civil
 14 service law, we conclude Smith should not be required to exhaust her contractual or
 15 administrative remedies.").

16 In order to state a claim under 42 U.S.C. § 1983 arising from the Fourteenth Amendment's
 17 guarantee of procedural due process, a plaintiff must allege that she was deprived of a life,
 18 liberty, or property interest without the process that was due. *Cleveland Bd. of Educ. v.*
Loudermill, 470 U.S. 532, 538 & n.3, 542 (1985).

19 A municipality or local governmental unit may be held liable under § 1983 for the
 20 unconstitutional acts of its officials or employees only when those acts are taken pursuant to
 21 an unconstitutional policy or custom. *Mettler v. Whitledge*, 165 F.3d 1197, 1204 (8th Cir.
 22 1999); see also *Powell v. City of Pittsfield*, 143 F. Supp. 2d 94, 113 (D. Mass. 2001) (stating
 23 that plaintiff's § 1981 claim must show that the injury resulted from an official policy or
 24 custom). A plaintiff must demonstrate that the governmental entity had an official policy or
 25 custom that violated the law and caused the constitutional injury. *Monell v. Dep't of Social*
Servs., 436 U.S. 658, 694 (1978). To establish a Monell claim based on a "widespread
 26 custom," a plaintiff must allege facts that tend to show (1) a "widespread, persistent pattern
 27 of unconstitutional misconduct by the governmental entity's employees; (2) deliberate
 28 indifference to or tacit authorization of such conduct by the governmental entity's
 29 policymaking officials after notice to the officials of that misconduct; and (3) that . . . the
 30 custom was the moving force behind the constitutional violation." *Springdale Educ. Ass'n*,
 31 133 F.3d at 653.

32 (CASE 0:06-cv-03142-JRT-FLN Document 46 Filed 05/23/08 Page 9 of 13)

1 The conduct of the UW deprived the Plaintiff of her constitutional rights to Privacy (with the
 2 2015-2017 UW PR releases), her rights to complain about discrimination by the UW based
 3 on age or disability, as well as her rights to Free Speech.¹⁸ **She has presented substantial**
 4 **evidence that it is the custom of the UW to publish confidential employee records, and**
 5 **that UW has supported and continued these practices even after notification of the**
 6 **wrongful conduct.**¹⁹

7 Plaintiff objects to Dkt 27 pp. 11, line 23 and 12 lines 1-14 as deliberately misleading
 8 misinterpretations of Plaintiff's Complaint, speculation regarding Plaintiff's argument, and
 9 unfounded assertions. Plaintiff also objects to references to Dkt 15 as this was improperly
 10 filed in the court records, and objects that this is misrepresented by Defendant.

11 **5. Whistleblower** Protection for persons reporting improper government actions(RCW
 12 42.40.040(5)(c), sec. 704(a) of title VII, and Sec. 503(a) of ADA)

13 The Plaintiff asserts that she is entitled to anonymity in this action.

14 In addition, section 704(a) and RCW 49.60.210 provide that it is an unlawful employment
 15 practice to discriminate against an individual because she has opposed any of these unlawful,
 16 discriminatory practices, and section 503(b) of the ADA prohibits coercion, intimidation,
 17 threats, or interference with anyone because they have exercised or enjoyed, or aided or
 18 encouraged others in their exercise or enjoyment, of rights under the Act. The "Civil Rights
 Act of 1991 provides substantial additional monetary provisions to remedy instances of
 retaliation or other discrimination, including, for example, to remedy the emotional harm
 caused by on-the-job harassment." (enclosure with EEOC Form 131-A (11/09))

19 The Plaintiff has described Retaliatory actions (RCW 42.40.050, 42.40.020) that occurred
 20 during her employment(Dkt. 2-1) and PRs contain evidence of continuing retaliation. The

21 ¹⁸ The Settlement Agreement at #16 (a) (Dkt. 30-3 p. 4) interferes with Plaintiff's First Amendment Rights.

22 ¹⁹ This lawsuit was served to the Washington State Attorney General and to the President of UW

1 practices of the UW in publishing personally identifiable accommodations requests, health,
2 injury, claims, personal leave records, dates of birth etc. of individual employees, are
3 certainly practices that could have the effect of discrimination based on disability, or age.
4

5 The Plaintiff has suffered monetary and physical/emotional damages due to the
6 actions of UW. (Decl. Plaintiff)

7 **IV. INJUNCTIVE RELIEF**

8 • Prays for the Court to grant the relief requested in Plaintiff's Motion to Seal Records(Dkt.
9 36), and to secure Plaintiff's employee records.

10 • Requests the Court to strike the records as described herein.

11 • Allow that Plaintiff is entitled to anonymity in this action as a whistleblower.

12 • Order the UW to address the privacy, safety and personal data security issues described
herein

13 There is significant, irrefutable evidence that UW has violated Laws, Regulations and
14 Policies and the UW is not entitled to a decision in its favor as a matter of law. Thus the
15 Plaintiff's claims should go forward.

16
17 Dated: Sept 11, 2017

18 Signed: julie dalessio

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